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**The Senate of
The State of Texas**

Committees:
CRIMINAL JUSTICE
Chairman
STATE AFFAIRS
INTERGOVERNMENTAL
RELATIONS
NOMINATIONS

March 24, 1993

FILE # ~~HE 1111~~ 93

I.D.# 19797

The Honorable Dan Morales
Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

RQ-521

Dear General Morales:

There is a growing sentiment, even among many persons who favor zoning, that the public should be allowed to conduct a vote on the matter before or soon after zoning is adopted by the City of Houston. To that end, a number of citizens in Houston have circulated a charter amendment petition in the form attached hereto. It is my understanding that they now have enough signatures for presentation of the petition.

Cases on the related issue of initiative and referendum elections for zoning raise serious doubts about the validity of the petition. See San Pedro North, LTD. v City of San Antonio, 562 S.W. 2d 260 (Tex. Civ. App. - San Antonio 1978, writ ref'd n.r.e., cert. den. 439 U.S. 1004); Hancock v Rouse, 437 S.W. 2d 1, (Tex. Civ. App. - Houston (1st Dist.) 1969, writ ref'd n.r.e.). These cases essentially hold that the state's zoning enabling law vests governing bodies of cities with nondelegable authority to adopt, amend, and repeal zoning ordinances only after certain specific procedures are followed. By subjecting a zoning ordinance to a public vote, case law suggests that the state-mandated procedures are not fulfilled.

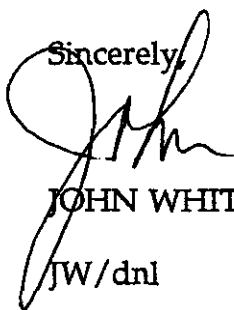
Senator Henderson has filed SB 1268 (also attached), which would essentially validate the petition if it is adopted. I would appreciate your counsel as to how the public might be given an election on zoning without the need for a bill to be passed, if you believe that is possible. I have been advised that the Houston City Charter does not contain a provision for non-binding referenda may not be held without charter authority.

Specific concerns have been raised about the following issues, which are posed to you:

- 1) Are general provisions relating to binding initiatives (adoption of ordinances) and binding referenda (repeal of ordinances) in city charters applicable to zoning ordinances?
- 2) May a charter election be used to repeal a zoning ordinance, as in the attached example?
- 3) May a charter be amended to require a cooling off period and binding referendum for the adoption of zoning, as in the attached example?
- 4) May a home-rule city that has no provision on the subject in its charter conduct a non-binding referendum?

It is urgent that these issues be resolved as soon as possible, and your early attention would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Whitmire', with a large, stylized initial 'J'.

JOHN WHITMIRE

JW/dnl

PETITION FOR CHARTER AMENDMENT TO HAVE A REFERENDUM ON ZONING

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF HOUSTON

We, the undersigned registered voters of the City of Houston, Texas, under Section 9.004 of the Local Government Code, hereby request an election to allow the voters to decide whether or not to add the following section to our Charter to read as follows:

"ARTICLE VII(B), SECTION 13, REFERENDUM ON ZONING.

The City of Houston shall have the power to adopt a zoning ordinance only by: (a) allowing a six month waiting period after publication of any proposed ordinance for public hearings and debate and (b) holding a binding referendum at a regularly scheduled election. Any existing zoning ordinance is hereby repealed."

1	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
2	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
3	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
4	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
5	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
6	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
7	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	
8	<input type="checkbox"/> Mr	Last	First	Mid	Voter Registration, Cert #	Harris County	Phone	Date
	<input type="checkbox"/> Ms							/ / 1992
Street Address				Houston, Texas	Zip 77	Precinct	Signature	

1. Signer must be a registered voter and reside in the City of Houston
2. Signer must print and sign name as it appears on the Voter Registration card
3. Circulator must sign each petition sheet
4. Please return all petition forms to: Houston Property Rights Association
6071 Westheimer Suite 777, Houston, TX 77056-3606 • 713-224-4144

Circulator's Signature

Page Total

Sub Total

SB 1268

1 prohibit the adoption or modification of any charter provision of a
2 home-rule municipality that requires a waiting period prior to the
3 adoption of zoning regulations or the submission of the initial
4 adoption of zoning regulations to a binding referendum election, or
5 both, provided that all procedural requirements of this chapter for
6 the adoption of the zoning regulations are otherwise complied with.
7 (d) The provisions of this section may only be utilized for
8 the repeal of a municipality's zoning regulations in their entirety
9 or for determinations of whether a municipality should initially
10 adopt zoning regulations.
11 SECTION 2. The importance of this legislation and the crowded
12 condition of the calendars in both houses create an emergency and
13 an imperative public necessity that the constitutional rule
14 requiring bills to be read on three separate days in each house be
15 suspended, and this rule is hereby suspended, and that this act
16 take effect and be in force from and after its passage, and it is
17 so enacted.

SENATE BILL 1268

FILED



A BILL TO BE ENTITLED
AN ACT
relating to elections concerning zoning issues in home-rule
municipalities;
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Subchapter A, Chapter 211, Local Government Code
is amended by adding Section 211.016 to read as follows:
211.016. Zoning initiatives and referenda in home-rule
municipalities.
(a) Notwithstanding any procedural or other requirements of
this chapter in the contrary, the electors of a home-rule
municipality may repeal the municipality's zoning regulations, as
adopted under this chapter, in their entirety by either:
(1) a charter election conducted pursuant to applicable laws;
OR
(2) upon the initial adoption of zoning regulations by the
municipality, by use of any referendum process that is
authorized under the charter of the municipality for public
protest of the adoption of ordinances in general.

(b) Notwithstanding any procedural or other requirements of
this chapter in the contrary, the governing body of a home-rule
municipality may upon its own action submit the repeal of the
municipality's zoning regulations, as adopted under this chapter,
in their entirety to the electors by use of any process that is
authorized under the charter of the municipality for a popular vote
on the rejection or repeal of ordinances in general.
(c) The provisions of this chapter shall not be construed to